



# **Interim Audit Report of the Audit Division on the National Campaign Fund**

February 4, 2008 – December 31, 2008

## **Why the Audit Was Done**

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## **Future Action**

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## **About the Committee** (p. 2)

The National Campaign Fund<sup>2</sup> is a non-connected committee, headquartered in Laguna Niguel, California. For more information, see the chart on Committee Organization, p. 2.

## **Financial Activity** (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 1,927,095
○ Loans Received	5,000
○ Other Receipts	3,489
<b>Total Receipts</b>	<b>\$ 1,935,584</b>
• <b>Disbursements</b>	
○ Independent Expenditures	\$ 1,186,972
○ Operating Expenditures	679,546
○ Refunds of Contributions	26,143
○ Loan Repayments	5,000
<b>Total Disbursements</b>	<b>\$ 1,897,661</b>

## **Findings and Recommendations** (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Failure to File Notices and Properly Disclose Independent Expenditures (Finding 2)

<sup>1</sup> 2 U.S.C. §438(b).

<sup>2</sup> On December 15, 2010, the National Campaign Fund changed its name to Expose Obama.

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# Table of Contents

	Page
<b>Part I. Background</b>	
Authority for Audit	1
Scope of Audit	1
<b>Part II. Overview of Committee</b>	
Committee Organization	2
Overview of Financial Activity	2
<b>Part III. Summaries</b>	
Findings and Recommendations	3
<b>Part IV. Findings and Recommendations</b>	
Finding 1. Misstatement of Financial Activity	4
Finding 2. Failure to File Notices and Properly Disclose Independent Expenditures	5

# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the National Campaign Fund (NCF) undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### **Scope of Audit**

Following Commission-approved procedures, the Audit staff evaluated various risk factors and, as a result, this audit examined:

1. the consistency between reported figures and bank records;
2. the disclosure of individual contributors' occupation/name of employer;
3. the disclosure of independent expenditures; and
4. other committee operations necessary to the review.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	August 20, 2007
• Audit Coverage	February 4, 2008 <sup>3</sup> – December 31, 2008
<b>Headquarters</b>	
Laguna Niguel, California	
<b>Bank Information</b>	
• Bank Depositories	Three
• Bank Accounts	Three Checking Accounts
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	James V. Lacy
• Treasurer During Period Covered by Audit	James V. Lacy
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ February 4, 2008</b>	<b>\$ 0</b>
<b>Receipts</b>	
○ Contributions from Individuals	1,927,095
○ Loans Received	5,000
○ Other Receipts	3,489
<b>Total Receipts</b>	<b>\$ 1,935,584</b>
<b>Disbursements</b>	
○ Independent Expenditures	1,186,972
○ Operating Expenditures	679,546
○ Refunds of Contributions	26,143
○ Loan Repayments	5,000
<b>Total Disbursements</b>	<b>\$ 1,897,661</b>
<b>Cash-on-hand @ December 31, 2008</b>	<b>\$ 37,923</b>

<sup>3</sup> Although NCF registered with the Commission on August 20, 2007, the initial bank activity occurred on February 4, 2008.

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Misstatement of Financial Activity**

During audit fieldwork, a comparison of NCF's reported financial activity with its bank records revealed that, for 2008, NCF understated reported receipts and disbursements by \$69,339 and \$100,887, respectively, and overstated ending cash-on-hand by \$31,448. The Audit staff recommends that NCF amend its reports to correct the misstatement. (For more detail, see p. 4)

##### **Finding 2. Failure to File Notices and Properly Disclose Independent Expenditures**

During audit fieldwork, the Audit staff ascertained that NCF disclosed independent expenditures, totaling \$1,548,622, on Schedule E (Itemized Independent Expenditures). The Audit staff noted that only \$1,261,206 of these expenditures appeared to meet the definition of independent expenditure and contained language expressly advocating the election or defeat of a clearly identified candidate. Of these independent expenditures NCF:

- did not file 24/48-hour notices for \$1,153,748 in a timely manner and did not file any 48-hour notices for \$33,485; and
- did not properly disclose independent expenditures totaling \$528,662 made (i.e., publicly disseminated) prior to payment as "memo" entries on Schedule E and as a reportable debt on Schedule D (Debts and Obligations).

If NCF believes that these expenditures (\$1,261,206) did not require reporting as independent expenditures, the Audit staff recommends that it provide evidence to support that conclusion. Absent that, Audit staff recommended that NCF submit and implement revised procedures for reporting independent expenditures. (For more detail, see p. 5)

## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

During audit fieldwork, a comparison of NCF's reported financial activity with its bank records revealed that, for 2008, NCF understated reported receipts and disbursements by \$69,339 and \$100,887, respectively, and overstated ending cash-on-hand by \$31,448. The Audit staff recommends that NCF amend its reports to correct the misstatement.

#### Legal Standard

**Contents of Reports.** Each report must disclose:

- The amount of cash-on-hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

#### Facts and Analysis

##### A. Facts

During audit fieldwork, the Audit staff reconciled reported financial activity with bank records for calendar year 2008. The following chart outlines the discrepancies for the receipts, disbursements, and the ending cash balance. The succeeding paragraphs explain why the differences occurred, if known.

2008 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ February 4, 2008	\$0	\$0	\$0
Receipts	\$1,866,245	\$1,935,584	\$69,339 Understated
Disbursements	\$1,796,773	\$1,897,661	\$100,887 Understated
Ending Cash Balance @ December 31, 2008	\$69,372 <sup>4</sup>	\$37,923	\$31,448 Overstated

<sup>4</sup> This column and the discrepancy column do not total correctly because of a discrepancy between the reported ending cash on one report and beginning cash on the succeeding report (a \$100 understatement).

The understatement of receipts resulted from unidentified differences that occurred primarily during the 2008 year-end report period. Based on a limited review of available records, it appeared that all contributor information received by the vendor that processed deposits of contributions may not have been forwarded to the vendor responsible for the data entry.

The understatement of disbursements resulted from the following:

• Disbursements not reported	\$ 96,398
• Reported disbursements not supported by a check or debit	(2,596)
• Contribution refunds not reported	7,433
• Amounts incorrectly reported	(695)
• American Express charges not reported	522
• Unexplained difference	<u>(174)</u>
<b>Net Understatement of Disbursements</b>	<b><u>\$ 100,887</u></b>

The \$31,448 overstatement of the ending cash-on-hand resulted from the misstatements described above.

#### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff explained the misstatements and provided schedules to NCF's Treasurer and Assistant Treasurer. They agreed to amend their reports as necessary.

The Audit staff recommends that, within 30 calendar days of service of this report, NCF:

- Amend its reports to correct the misstatements noted above; and,
- Amend its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment. Further, NCF should reconcile the cash balance of its most recent report to identify any subsequent discrepancies that may affect the adjustment recommended by the Audit staff.

### **Finding 2. Failure to File Notices and Properly Disclose Independent Expenditures**

#### **Summary**

During audit fieldwork, the Audit staff ascertained that NCF disclosed independent expenditures, totaling \$1,548,622, on Schedule E (Itemized Independent Expenditures). The Audit staff noted that only \$1,261,206 of these expenditures appeared to meet the definition of independent expenditure and contained language expressly advocating the election or defeat of a clearly identified candidate. Of these independent expenditures NCF:



- did not file 24/48-hour notices for \$1,153,748 in a timely manner and did not file any 48-hour notices for \$33,485; and
- did not properly disclose independent expenditures totaling \$528,662 made (i.e., publicly disseminated) prior to payment as "memo" entries on Schedule E and as a reportable debt on Schedule D (Debts and Obligations).

If NCF believes that these expenditures (\$1,261,206) did not require reporting as independent expenditures, the Audit staff recommends that it provide evidence to support that conclusion. Absent that, Audit staff recommended that NCF submit and implement revised procedures for reporting independent expenditures.

### **Legal Standard**

- A. Definition of Independent Expenditures.** The term "independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. 11 CFR §100.16.
- B. Disclosure Requirements – General Guidelines.** An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as "memo" entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.
- C. Last-Minute Independent Expenditure Reports (24-Hour Notices).** Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20<sup>th</sup> day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour notice is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).
- D. Independent Expenditure Reports (48-Hour Notices).** Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The notices must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, it was noted that NCF's initial filing for 2008 (the April 15<sup>th</sup> Quarterly Report) disclosed all expenditures as operating expenditures on Schedule B, Line 21(b). On July 11, 2008, NCF amended that report and disclosed most of the former operating expenditures as independent expenditures on Schedule E, Line 24. During the remainder of 2008, NCF filed reports which disclosed the majority of its disbursements as independent expenditures.

NCF disclosed independent expenditures, totaling \$1,548,622, on Schedule E. Most of these disbursements were for the printing and postage costs for direct mail solicitation letters that were disclosed as either in support of Rudy Giuliani or John McCain for President or in opposition to Hillary Clinton or Barack Obama for President. The Audit staff reviewed these expenditures to assess whether NCF properly reported them on Schedule E and if 24/48-hour notices were required to be filed. The review indicated that only \$1,261,206 of these expenditures appeared to meet the definition of an independent expenditure and contained language expressly advocating the election or defeat of a clearly identified candidate. A review of the direct mail pieces and invoices for those expenditures (\$1,261,206) revealed the following:

- NCF did not file in a timely manner 24/48-hour notices of its independent expenditures for \$1,153,748. In addition, NCF did not file any 48-hour notices for \$33,486.
- NCF reported the independent expenditures when the invoices were paid; some payments were weeks or months after the dissemination date of the printed material. For expenditures totaling \$528,662, NCF should have disclosed independent expenditures as memo entries on Schedule E, filed with reports covering the dates when the materials were disseminated, and included a corresponding debt on Schedule D.

### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff addressed these matters and provided schedules detailing these expenditures to NCF representatives. NCF representatives stated that they would comply with our recommendation.

The Treasurer later emailed the Audit staff NCF's position regarding independent expenditures. The email stated, "*Political fundraising letters* that are not intended to influence a vote, not timed to a particular election, but which are intended solely to motivate a donation for the group (and which have words of express advocacy in them) should be excluded from the definition of independent expenditure for your extraordinary reporting purposes, as I stated to you. I have previously written to the FEC on these views and spoken to reporters about them as well. When the FEC pushes administrative overhead activities like general fundraising into IE status, it creates a costly regulatory burden for small donor committees like ours that do not have the financial backing,

permanent staff, and infrastructure to keep up with the filings. Hardly any public purpose is served by the extraordinary reporting requirements imposed on just a fundraising letter; and the public is indeed misled (sic) by the artificial inflation in dollars spent on IEs the current requirements cause. In the last election, I fielded questions about the National Campaign Fund from reporters of the *Huffington Post* and the *New York Times* who relied on the IE expense compilations as indications of actual IE activity in direct mail. I told both that the FEC requirements mislead the public in the true nature of the expenditures, and both the reporters agreed with me."

Subsequent to the exit conference, the Audit staff made additional requests to NCF for documentation and explanations to clarify whether some of the communications resulted in independent expenditures. NCF was asked to clarify how some of the communications were distributed and to provide the content of hyperlinks that were contained in those communications. In addition, NCF was requested to explain why some of the communications did not appear to correlate with the mailing dates. NCF responded by stating that the communications in question were "e-mailings" and provided the content for one of the e-mailings. NCF also explained that it revised the communication multiple times for each mailing but did not keep previous versions of the communication, and therefore were unable to provide the previous versions. NCF's responses have been considered in the analysis of independent expenditures presented above.

The Audit staff recommends that, within 30 calendar days of service of this report, NCF take the following action:

- Provide any documentary evidence that would demonstrate that these disbursements were not independent expenditures and therefore did not require 24/48-hour notices; and
- Submit and implement revised procedures for reporting independent expenditures, as well as for tracking dissemination dates for such expenditures to allow for timely filing of 24/48-hour reporting notices.